

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

REBECCA L. RINE)	
Claimant)	
VS.)	
)	Docket No. 1,030,977
TNT MANAGEMENT)	
Respondent)	
AND)	
)	
TRAVELERS INDEMNITY COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the April 14, 2008, Order Denying Compensation entered by Administrative Law Judge Pamela J. Fuller.

ISSUES

On May 15, 2006, claimant fell down some stairs while working for respondent. Claimant alleges she injured both her low back and neck in that fall. The principal issue presented to Judge Fuller at the April 11, 2008, preliminary hearing was whether claimant injured her neck in that fall. In the April 14, 2008, Order, the Judge granted claimant medical treatment, including surgery to the cervical spine as recommended by Dr. Paul S. Stein. But the Judge denied claimant's request for temporary total disability benefits commencing March 14, 2008, which was the last day claimant worked for a subsequent employer.

Respondent and its insurance carrier contend Judge Fuller erred. They argue claimant had a neck problem before the May 2006 accident and "there was no evidence that the work-related accident had aggravated that condition."¹ They next argue the mechanics of the accident are not consistent with a neck injury as claimant descended the stairs on her buttocks. In addition, they assert there is no documentation of neck complaints that would suggest her May 2006 accident caused the herniated cervical disc displayed in her December 2007 MRI. And they argue none of the testing done following

¹ Respondent's Brief at 2 (filed May 14, 2008).

the accident revealed a neck injury, including the cervical x-rays taken the day after the accident. In short, respondent and its insurance carrier request the Board to reverse the April 14, 2008, Order.

Conversely, claimant contends the Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After considering the record compiled to date, the undersigned Board Member finds and concludes:

On May 15, 2006, claimant fell down some stairs while working for respondent. According to claimant, she bounced down several steps on her buttocks. Claimant described the accident, as follows:

I went upstairs to check -- to check the tile job in the bathroom and I counted how many tiles I needed. And on the way back down, the top stair, I -- I went down two steps and I was on the landing and then when I turned to go down the rest of the steps, my feet came out from underneath me and I bounced down those steps and I hit hard three times all the way down and I landed on the last -- the last step there was the third step. I landed on the last step.²

Claimant promptly reported the accident to her supervisor and advised her back was hurting.³ Claimant resumed her work duties but left after approximately 30 minutes.

The next day claimant sought medical treatment at the emergency room of the Southwest Medical Center in Liberal, Kansas. Claimant alleges she reported she hurt her low back and neck in her fall. She testified, however, that her primary pain was in the low back. The emergency room records indicate claimant reported severe low back pain and tingling in her lower extremities and numbness in her upper extremities. Those records also show claimant's primary complaint was pain in her left buttocks and that an examination of her neck was normal.

The emergency room physician ordered x-rays of claimant's low back and cervical spine. Moreover, the radiologist's report regarding the x-ray of the cervical spine indicates the reason for the exam was pain.⁴ That x-ray showed narrowing and a bony osteophyte

² P.H. Trans. at 5.

³ *Id.* at 6.

⁴ *Id.*, Resp. Ex. 1.

at the anterior and posterior aspect of C5-6. Claimant also testified that someone in the emergency room told her that the fall could have affected her neck. The medical center referred claimant to Dr. Bob Sager for follow-up treatment.

Claimant first saw Dr. Sager on May 17, 2006. A review of Dr. Sager's records indicates claimant's primary complaints were low back pain and tingling. When a lumbar MRI showed a moderate disc protrusion at L5-S1, Dr. Sager recommended a neurosurgical consultation. Accordingly, on June 29, 2006, claimant saw Dr. Matthew N. Henry, who noted she was in excruciating back and leg pain. Dr. Henry recommended a discectomy or fusion at L5-S1 depending upon the outcome of a discogram. Claimant testified she told Dr. Henry about her neck pain but was told he could not look at her neck because that was not authorized.

Respondent then referred claimant to Dr. R. Chris Glattes, an orthopedic surgeon, for a second opinion. Claimant saw Dr. Glattes in early August 2006 and gave him a pain drawing showing pain and pins and needles sensations across her neck and posterior arms. The doctor did not recommend low back surgery and was unwilling to manage her care as there was some type of friction between claimant and the doctor and his staff. Consequently, respondent referred claimant to Dr. Paul S. Stein, a neurosurgeon. Dr. Stein examined claimant in late September 2006 and found a large herniated disc at L5-S1, which was consistent with her severe back and left leg pain, and recommended an L5-S1 discectomy. Again, claimant testified she told Dr. Stein about the numbness and tingling she was having in her arms but was told that he was only authorized to look at her low back.

Meanwhile, claimant continued receiving treatment from Dr. Sager until she was eventually referred back to Dr. Henry for low back surgery. In April 2007, Dr. Henry performed a discectomy and fusion at L5-S1.

In September 2007, claimant returned to Dr. Stein for an examination of her neck at respondent's request. Dr. Stein recommended a cervical MRI and x-rays. Those tests, which were finally completed in late December 2007, showed a disc protrusion and osteophyte at C4-5 that was causing considerable spinal cord compression and a lesser degree of compression at C5-6. Regardless of any possible symptom magnification, Dr. Stein recommended surgery.

Following the May 2006 accident, claimant made several unsuccessful attempts to return to work for respondent. Claimant did not work anywhere again until late September 2007 when she began working on a part-time basis for the Center for Independent Living as a personal assistant. But that job ended in mid March 2008 when the employer could not accommodate the restrictions Dr. Stein had suggested for claimant's neck.

In short, the greater weight of the evidence indicates claimant has been having neck and arm symptoms since her May 2006 accident that have been overshadowed by her low back injury, which caused her excruciating pain. The medical records tend to substantiate claimant's testimony that she mentioned her neck and arm symptoms to the various doctors that she saw but their attention was focused upon the more pressing low back complaints. Claimant's testimony is credible that she attempted to tell two doctors about her neck complaints but she was told they were not authorized to evaluate her neck. The undersigned affirms the Judge's finding that claimant's present neck complaints are related to her May 2006 accident.

The undersigned is not persuaded that claimant's present neck complaints are similar to those that she had in 1993. The medical records from that period indicate that claimant had persistent neck complaints, mid-thoracic pain, and stabbing pain in her lower back. The diagnoses at that time were scapulocostal syndrome with associated multiple trigger points, occipital neuralgia with neuritis, multifidus triangle syndrome with multiple trigger points, and chronic pain syndrome. But there is nothing to suggest in those records that those diagnoses were caused by a disc protrusion or resulting spinal cord compression. In short, the evidence indicates claimant injured or aggravated her neck on May 15, 2006, when she bounced down the stairs at work. And that is an accident under the Workers Compensation Act for which respondent is responsible.

WHEREFORE, for the reasons above the undersigned affirms the April 14, 2008, Order entered by Judge Fuller.

IT IS SO ORDERED.

Dated this ____ day of June, 2008.

KENTON D. WIRTH
BOARD MEMBER

c: Rebecca L. Rine, 631 N. Lincoln, Liberal, KS 67901
William L. Townsley, III, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge